

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
MOUNTAIN EXPRESS OIL COMPANY, et)	
al.,)	Case No. 23-90147 (DRJ)
)	
Debtors. ¹)	(Jointly Administered)
)	

**PHILLIPS 66 COMPANY’S OBJECTION AND RESERVATION OF RIGHTS TO
NOTICE TO COUNTERPARTIES TO POTENTIALLY ASSUMED EXECUTORY
CONTRACTS AND UNEXPIRED LEASES**

Phillips 66 Company (“Phillips”) files this Limited Objection and Reservation of Rights (the “Limited Objection”) to the *Notice to Counterparties to Potentially Assumed Executory Contracts and Unexpired Leases* [Doc. No. 728] (the “Cure Notice”) and states as follows:

I. FACTUAL BACKGROUND

1. Phillips provides fuel and / or rights to utilize trademarks, trade dress, service marks, and color schemes of the Phillips 66® and /or Conoco® brands to the Debtors pursuant to a Trademark Licensing Agreement (the “TLA”) and a Branded Marketer Agreement (the “BMA,” and, together with the TLA, the “Phillips Agreements”).² As of the date of this Limited Objection, there were 16 sites (and 10 active sites) subject to the BMA and 13 sites subject to the

¹ A complete list of each of the Debtors in these Chapter 11 cases may be obtained on the website of Debtors’ claims and noticing agent at www.kcellc.net/mountainexpressoil. The location of Debtor Mountain Express Oil Company’s principal place of business and the Debtors’ service address in these Chapter 11 cases is 3650 Mansell Road, Suite 250, Alpharetta, GA 30022.

² Copies of the Phillips Agreements as amended will be made available upon request by the Court, subject to compliance with applicable confidentiality provisions. Upon information and belief the Phillips Agreements have been placed in the data room for the proposed sale process and should be available to buyers.

TLA.³ Both the BMA and TLA contain consent rights related to any purported assignment or transfer of the BMA and TLA to a third party. As of May 31, 2023, the unamortized program money balance under the Phillips Agreements was \$1,656,276.85 related to use of the Phillips image and other licensed intellectual property under the BMA and TLA. This amount can be broken down by store location in the event of a partial sale of assets by the Debtors. Additionally, Phillips is currently aware of non-monetary defaults including: [add if any].

2. On March 18, 2023 (the “Petition Date”), each of the above-captioned Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

3. Shortly after the Petition Date, Phillips entered into a fuel supply agreement under the Court’s *Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Fuel Suppliers and Transporters; (II) Authorizing Banks to Honor and Process Related Checks and Electronic Transfers; and (III) Granted Related Relief* (“Fuel Supply Order”). (Doc. No. 86). Phillips has continued to supply fuel under the Fuel Supply Order post-petition.

4. On June 5, 2023, Debtors filed *Debtors’ Emergency Motion for (I) Entry of an Order to Appear and Show Cause against Monto Food Mart Inc.; Yonkers Fuel Inc.; Broadway Fuel Inc.; Prime Petro Inc.; American 1 Gas Inc.; Commack Fuel Inc.; M&Y Pump Services Inc.; and VM Petro, Inc.; and (II) the Imposition of Compensatory and Coercive Sanctions Against the Subject Parties for Violation of the Automatic Stay* (the “Sanctions Motion”). [Doc. No. 488]. The Sanctions Motion address certain modifications of the credit card systems allegedly taken by dealer-operators at six of Debtors sites that are subject to the TLA. Phillips understands that the payment issues raised in the Sanctions Motion may be largely resolved [*see*

³ An additional site located at 3701 Industrial Drive, Bossier City, Louisiana, was previously subject to the BMA but de-branded by agreement of the Parties.

Doc. Nos. 726, 729), but Phillips remains unclear what impact, if any, the actions identified in the Sanctions Motion has on Phillips' payments for those locations.

5. On June 22, 2023, the Court entered the *Order (I) Approving Bid Procedures for Sale of the Debtors' Assets, (II) Approving Bid Protections, (C) Scheduling Certain Dates with Respect Thereto, (IV) Approving the Form and Manner of Related Notice Thereof, and (V) Approving Contract Assumption and Assignment Procedures* (the "Sale Procedures Order"). [Doc. No. 701]. Pursuant to the Sale Procedures Order, Debtors served the Cure Notice. With respect to the Phillips Agreements, the Cure Notice provides as follows:

Store Number	Contract Type	Title	Counterparty	Debtor Entity	Est. Cure
600	Oil Company Agreement	TRADEMARK LICENSE AGREEMENT	PHILLIPS 66 COMPANY	Mountain Express Oil Company	\$0.00
448 9 443 449	Oil Company Agreement	Second Amendment to Trademark License Agreement	PHILLIPS 66 COMPANY	Mountain Express Oil Company	\$0.00
449 448	Oil Company Agreement	SECOND AMENDMENT TO TRADEMARK LICENSE AGREEMENT	PHILLIPS 66 COMPANY	Mountain Express Oil Company	\$0.00
579 950 145 956 951 674	Oil Company Agreement	Exhibit A-1 to Trademark Licensing Agreement	PHILLIPS 66 COMPANY		\$0.00
593 965 967 961 972 964 974 443 975 968 963 962	Oil Company Agreement	Exhibit A-1 to Branded Marketer Agreement	PHILLIPS 66 COMPANY		\$0.00
951 952 956 3126	Oil Company Agreement	BRANDED MARKETER AGREEMENT	PHILLIPS 66 COMPANY	Mountain Express Oil Company	\$0.00
	Oil Company Agreement	First Amendment to Trademark License Agreement	PHILLIPS 66 COMPANY	Mountain Express Oil Company	\$0.00
	Oil Company Agreement	Letter Re: Trademark License Agreement	PHILLIPS 66 COMPANY PREMIER PETROLEUM INC	Mountain Express Oil Company	\$0.00

6. Under the Sale Order, an auction will be held July 28, 2023, and adequate assurance objections are due on August 3, 2023. The Court has set a sale hearing for August 7, 2023.

II. LIMITED OBJECTION

7. Section 365(b) of the Bankruptcy Code allows a debtor to assume and assign a lease or other executory contract only if "at the time of assumption of such contract or lease, the

[debtor] . . . compensates, or provides adequate assurance that the [debtor] will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default.” 11 U.S.C. § 365(b)(1)(B); *see also Century Indem. Co. v. Nat’l Gypsum Co. Settlement Trust (In re Nat’l Gypsum Co.)*, 208 F.3d 498, 506 (5th Cir. 2000); *Official Comm. of Unsecured Creditors v. Aust (In re Network Access Solutions, Corp.)*, 330 B.R. 67, 76 (Bankr. D. Del. 2005) (“[W]hen a contract is assumed under section 365, all unpaid amounts due under the agreement must be paid.”).

8. Phillips files this limited objection to the Cure Notice for the following reasons:
 - a. The Cure Notice fails to account for the unamortized program balance of \$1,656,276.85 as of May 31, 2023. This amount is subject to change. If the Phillips Agreements are assumed, Phillips anticipates it will be cured in the ordinary course of business by a buyer through performance and further amortization under the Phillips Agreements. However, this amount should be identified and provided to potential buyers.
 - b. Additionally, Phillips reserves rights to any cure that may arise as a result of the Sanctions Motion. Due to the lag in payment processing, it is entirely possible that additional amounts are owed in cure for either the sites identified in the Sanctions Motion or at other Phillips-branded locations. However, it is entirely possible that modification of the payment systems at its branded sites will result in defaults.
 - c. Phillips generally reserves any and all cure amounts that may be due between now and the time of sale but which may be quantified in the ordinary course of business as fuel sales and payments are processed.

9. Phillips anticipates these issues will be resolved with the Debtors and any potential buyer. However, Phillips files this limited objection to preserve its rights.

II. RESERVATION OF RIGHTS

10. Phillips reserves the right to further amend, modify, or supplement this Limited Objection at any time and also reserves its rights, if any, as a creditor in these bankruptcy cases. Phillips also reserves its consent rights under the Phillips Agreements and the right to object based on the inability to provide adequate assurance of future performance on the part of the Debtors and/or any proposed assignee as required by section 365(f)(2) of the Bankruptcy Code pursuant to the process set forth in the Sale Order.

WHEREFORE, Phillips prays the court (i) sustain this Limited Objection and (ii) grant such other relief to which they may be justly entitled.

Dated: July 11, 2023

Respectfully submitted,

/s/ Bradley C. Knapp

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ATTORNEYS FOR PHILLIPS 66 COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2023, a copy of the foregoing document was served via the Court's CM/ECF system upon all parties receiving such notice.

/s/ Bradley C. Knapp

Bradley C. Knapp